



## MEMORANDUM DECISION - NOT FOR PUBLICATION

**FRIEDLANDER, Judge**

Shawn K. (Mother) and Bart K. (Father) appeal the involuntary termination of their parental rights to their children S.K., A.K., and L.K. Mother and Father present one issue for our review, which we restate as whether the trial court violated Mother and Father's right to due process by not allowing Father to challenge the finding that S.K., A.K., and L.K. were children in need of services (CHINS) during the termination of parental rights hearing.<sup>1</sup>

We affirm.

Mother and Father are the parents of S.K., born on January 15, 1996, L.K., born on January 22, 1997, and A.K., born on February 23, 1998.<sup>2</sup> On June 15, 2005, the Steuben County Department of Child Services (DCS) filed petitions alleging that S.K., L.K., and A.K. were CHINS. Each of the three petitions made the following allegations:

On June 13, 2005[,] Caseworker Fansler received a call from the Sheriff's Department that the minor child with his two brothers had been left with a non-relative, Shelly Givenny, who stated she was unable to care for the children. The father is currently in the Steuben County jail for non-payment of child support for his other children and the mother has a warrant for her in DeKalb County and is hiding from being arrested. The children stated to the Caseworker that they were worried because they have no electricity or water at their home and that they have no money to get these things turned back on. Lifeline has been working with the family for several months prior to this incident.

*Volume of Exhibits* Vol. 1, Petitioner's Exhibit 32. As a result of these conditions, S.K.,

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<sup>1</sup> Mother and Father do not argue that there was insufficient evidence presented to support the termination of their parental rights. Therefore, we do not address this issue.

L.K., and A.K. were placed in foster care. At a hearing on June 21, 2005, Father admitted that S.K., L.K., and A.K. were CHINS.<sup>3</sup>

DCS filed petitions to terminate Mother's and Father's parental rights to S.K., L.K., and A.K. on November 17, 2006. The trial court held hearings on the petitions on May 17 and May 23, 2007. At the time of the hearings, both Mother and Father were incarcerated. Father testified that he would be released in August 2007. Mother was incarcerated for dealing methamphetamine. Her earliest release date for that conviction was in 2010. Mother also had charges pending in DeKalb County for dealing methamphetamine as a class A felony and neglect of a dependent child as a class D felony.

During Father's testimony, the following exchange occurred:

[DCS]: Now, opposing counsel referenced that the reason why your children were removed by the Steuben County Department of Child Services in June of 2005 was that your wife was no longer able to take care of the children. Is that correct?

[Father]: That's what it says in black and white on paper but I don't believe that.

[DCS]: Ok. But she was incarcerated at the time running on a warrant. Is that correct?

[Father]: She was not incarcerated.

[DCS]: Ok, but she was, there was a warrant out for her arrest, correct?

[Father]: Uh . . .

[DCS]: And the children were staying with a friend?

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2 Mother and Father have three other unemancipated children: D.K., Z.K., and Lu. K. At the time of the termination of parental rights hearing, these three children were wards of the Williams County, Ohio Department of Child Services.

3 Mother was not present at any of the hearings on the CHINS petitions. S.K., L.K., and A.K. were adjudicated CHINS as to Mother in August 2005.

[Father]: No they were not. They were actually placed in the care of my brother-in-law at the time because she was making arrangements with her family or my family to put the children in with a family member . . .

[DCS]: So . . .

[Father's Counsel]: Can you let him finish . . .

[Father]: Can I finish responding to?

[DCS]: Yes, but again, we are not re-litigating the CHINS, there has already been an adjudication there, so again, to allow him to re-litigate that point I believe is contrary to the law. We already have a judgment on an admission by both him and mother to the CHINS petition.

[Father's counsel]: Your Honor, he is trying to answer the direct question that presumed a different fact. I think he should be allowed to explain what he understands the answer to be, that is that the children weren't placed with a stranger like [DCS's counsel] said but that they were placed with family members.

[Court]: That's been established already. Ok.

[Father's counsel]: Very good.

[Court]: Next question [DCS counsel].

*Transcript* at 62-63. On June 13, 2007, the trial court issued an order terminating Mother and Father's parental rights to S.K., L.K., and A.K., and this appeal ensued.

Mother and Father argue that the trial court violated their due process rights during the termination of parental rights hearing by not allowing Father to challenge the finding that S.K., L.K., and A.K. were CHINS. To the extent that the trial court may have barred Father from challenging the CHINS adjudications, Mother and Father's counsel did not object to this as a violation of due process. We have previously stated, "a party on appeal may waive a constitutional claim." *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d

185, 194 (Ind. Ct. App. 2003). Because Mother and Father did not raise an objection, their due process claim is waived.

Waiver notwithstanding, the trial court did not violate Mother and Father's due process rights. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037 (Ind. Ct. App. 2006), *trans. denied*. "When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process." *Id.* at 1043. "Due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses." *In re M.L.K.*, 751 N.E.2d 293, 295-96 (Ind. Ct. App. 2001).

Mother and Father's due process claim is premised on their contention that the trial court barred Father from challenging the CHINS adjudications. The trial court, however, made no such ruling. During Father's testimony, DCS's counsel asked Father if, in June 2005, S.K., L.K., and A.K. were left in the care of a friend. Father denied this and insisted that S.K., L.K., and A.K. were placed in the care of a family member. DCS's counsel interrupted Father before he could complete his answer. Father's counsel requested that Father be allowed to complete his answer. DCS's counsel stated that Father was attempting to relitigate the CHINS adjudications and that he was barred from doing this because he had admitted during the CHINS proceedings that S.K., L.K., and A.K. were CHINS. Father's counsel then addressed the trial court. She noted that Father was trying to answer a direct question from DCS's counsel "that presumed a different fact." *Transcript* at 63. Given this, Father's counsel asserted that Father "should be allowed to explain what he understands the

answer to be, that is that the children weren't placed with a stranger like [DCS's counsel] said but that they were placed with family members." *Id.* The trial court indicated that Father did not need to further explain his answer because his testimony established his belief that the children were left in the care of a family member. At no point during the hearing did the trial court rule that Father or Mother could not challenge the CHINS adjudications. Absent such a ruling, we cannot say that Mother and Father's due process rights were violated.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.